

City of Milloughby Hills

Interoffice Memo

Date: February 12, 2018

To: Council President Fellows, Council Members and Council Clerk

From: Robert M. Weger, Mayor/Safety Director

Subject: Veto on Ordinance 2018-10 – Engaging the Services of Skoda Minotti CPAs

This ordinance goes beyond a political witch hunt and is a real concern because of the expenditure being asked for by the passage of this ordinance.

I have total confidence in the fine work performed by all of my Administration, including our Finance Department led by Finance Director Frank Brichacek. This is evidenced by the State Auditor's awards that we have earned over the past several years, after years of the prior Administration's financial records that could not be audited. We have paid for independent auditors and I feel this is a rebuke to the fine, good work of the State Auditors who have spent months auditing us.

I am, therefore, vetoing this ordinance for the following reasons:

- **The choice of the CPA firm of Skoda Minotti CPAs**
 - 1) Why was the accounting firm of Skoda Minotti selected to perform a function that could be performed by the State Auditor's office? That would have been the appropriate course of action, given the fact that the Ordinance references "a concern regarding the existence of fraudulent activity ("willful intent to deceive")". The State Auditor would have then made the determination to either conduct a special audit or refer the case out to a private, unbiased accounting firm.

In the past, Council was invited to meet with the auditors and never raised these concerns. I suspect Council's decision to circumvent the fine services of the State Auditor stem from Council's meetings with the State Auditors in November 2016 and January 2017. At that time, Council's secret attempts to discredit Administration on multiple issues including pay ranges and use of city email addresses were rebuked by the State Auditors.

- 2) A fair process was not followed in the selection of Skoda Minotti. No qualifications or quotes were solicited from other qualified firms or individuals. It is the practice of the State Auditor's office to seek qualifications and quotes from at least five firms before a recommendation is made.
- 3) How was Skoda Minotti chosen? Who did the interviewing and who made the final decision?
- 4) The contract document is authored by Frank A Suponcic, CP and was prepared on February 8, 2018. Just one day earlier, Council Vice President Plecnik's social media posts that "Lake County LOVES John Plecnik and he is endorsed by...fmr. Lake County Recorder Frank Suponcic." I have concerns that the City is awarding a contract of \$15,000 to an individual who just made a political endorsement to a Public Official running for office. While this may be legal, it does not appear to be of the ethical caliber I would hope our Council would uphold. At minimum, Council Vice President should not have participated in this discussion or vote.

- **There are issues with the contract and ordinance:**

- 1) Why is the proposal addressed to the "Acting" Law Director, rather than the Mayor, the Chief Executive Officer of the City? By Charter, the Chief Executive Officer should receive the proposed addressed to him/her.
- 2) The Ordinance authorizes the Acting Law Director to engage the services of Skoda Minotti and to sign the contract for said services. I believe the Mayor is the only individual with the authority to bind the City to a contract, with the following signatures/approvals often required:
 - a. The Law Director certifying that the contract is in proper legal form, and
 - b. The Finance Director certifying that the amount of funds required to finance the contract are available and have been lawfully appropriated for the purpose of the contract, and
 - c. The Mayor, as Chief Executive Officer, binding the City to the terms of the contract.

Any contract that does not meet the above three criteria is null and void per ORC Section 5705.41(d).

 - d. The scope of the engagement is vague. It does not specify what or who Skoda Minotti is being engaged to investigate.

- e. The engagement contract does not specify who will be in charge of the audit or what staff members will be working on the audit. It is my understanding that there is a standard operating procedure for financial audit engagement letters. When the State Auditor provides us with the engagement letter for the City's bi-annual financial audits, this information is always included. Of course, the Auditor retains the right to adjust the staff based upon situations encountered or

the Auditor's own staffing needs. The engagement contract does not address "conflict of interest concerns." Along with Mr. Plecnik's political endorsement conflict, two more of the Administration employees have ties to Skoda Minotti, and all of these conflicts are of a concern to me. The incomplete, vague contract causes me to doubt the integrity of the final outcome.

- f. The engagement contract allows the Acting Law Director to control the procedures and activities to be investigated without any input from either me (as the City's CEO) or the City Council. Since the intent of this audit is to determine whether or not fraud has taken place, a more appropriate individual to oversee this contract would be the City or County Prosecutor.
- g. The engagement letter does not guarantee that a written report will be provided to the City upon the completion of the audit. It simply states that Skoda Minotti will meet with the Acting Law Director and any elected officials that the Acting Law Director decides to include in these meetings. Why are we giving an "Acting" Law Director, who has not undergone credentialing himself, this authority?
- h. Additional fees will be charged for any written report requested. I would demand a closing meeting with the auditors (to include the CEO and Finance Director) to prepare such a report as part of the contract.

- **There is a total lack of transparency with this contract:**

- 1) The engagement contract indicates that Skoda Minotti will meet with the Acting Law Director and any elected officials that the Acting Law Director decides to include in these meetings. Since these meetings are being called by Skoda Minotti, they will be outside the Open Meetings laws. They will be private meetings excluding the public.
- 2) The meetings may or may not be held at City Hall. If they are held at the offices of Skoda Minotti, the meetings will be held outside the City.

- 3) The engagement contract states that it will "...hold in strict confidence all information provided by you in connection with this engagement and shall not share any confidential information with persons outside the Firm...". This means that:
- a) The Acting Law Director will be in complete control of any information or findings of Skoda Minotti audit. If the Acting Law Director decides, the audit results may never be shared with me (as Mayor), the City Council or the public at large.
 - b) When an audit is conducted by the State Auditor's office, the Auditor's workpapers become a public record upon release of the audit. Since Skoda Minotti is retaining ownership of their workpapers, their work (as evidenced by their workpapers) will never be available for review by the public unless Skoda Minotti decides to release them. Even if they do, the requesting individual can never be sure that Skoda Minotti released their workpapers in their entirety. I find this in violation of the Open Meeting Law both in spirit and by the letter.
- 4) It appears that this contract was written in a manner to skirt the City's and State's Public Records and Open Meetings law.

The actions of this Council are unprecedented and, as such, I must veto this ordinance. Further, the end result of this is an attempt at malicious prosecution and abuse of process and may subject all of those in support of it to personal liability.

I remind Council that Ordinance 2017-70 which engages the services of Steve Byron as Acting Law Director (adopted 9/28/17, vetoed 10/11/17, and veto overridden 10/12/17) is being reviewed by a Court of law and any actions taken may be null and void.

I hereby veto Ordinance 2018-10 and ask Council's immediate reconsideration.